

**MINUTES
of the
FIRST MEETING
of the
DISABILITIES CONCERNS SUBCOMMITTEE
of the
LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE**

**August 28, 2015
Eastern New Mexico University
Multipurpose Room 110
Roswell**

The first meeting of the Disabilities Concerns Subcommittee of the Legislative Health and Human Services Committee was called to order on August 28, 2015 by Senator Nancy Rodriguez, chair, at 8:35 a.m. in Multipurpose Room 110 at Eastern New Mexico University (ENMU) in Roswell.

Present

Sen. Nancy Rodriguez, Chair

Absent

Rep. Tim D. Lewis, Vice Chair

Sen. Craig W. Brandt

Rep. Miguel P. Garcia

Sen. Linda M. Lopez

Advisory Members

Rep. Deborah A. Armstrong

Sen. Ted Barela

Sen. Gerald Ortiz y Pino

Rep. Nora Espinoza

Staff

Michael Hely, Staff Attorney, Legislative Council Service (LCS)

Shawn Mathis, Staff Attorney, LCS

Nancy Ellis, LCS

Diego Jimenez, LCS

Nancy Martinez, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Friday, August 28 — Multipurpose Room 110, ENMU, Roswell

Welcome and Introductions

Senator Rodriguez welcomed those assembled and asked subcommittee members and staff to introduce themselves. She then introduced Eloise Blake, president of the Community College Board of ENMU, who welcomed the group to the campus and touted the many excellent programs offered by the university.

ENMU-Roswell Special Services Program

Ken Maguire, Ph.D., vice president of academic affairs, supervises the Special Services Occupational Training Program at ENMU, which provides a variety of certificate programs for students with disabilities. It is a unique program that not only teaches students to live independently but also provides them with specific skills to maintain employment once they graduate, Dr. Maguire said. Occupational training areas include auto mechanics, food service, building maintenance, stocking and merchandising, laboratory animal caretaking, office skills, child care and veterinary assistance. Annual tuition for a three-semester program is between \$17,000 and \$20,000, all inclusive. Leah Lucier is deputy director of the program, which currently has an enrollment of 90 students. Dr. Maguire and Ms. Lucier were joined at the presentation table by a student, Kat Morgan, now in her third year of pursuing additional certificates, this time in office skills. Previously, Ms. Morgan earned certificates in veterinary assistance and child care. She came to ENMU shy and introverted, Ms. Lucier recalled, but soon began to excel and is now getting paid for work while continuing her education. There is a lot of support for students in the first year, when they live in dormitories on campus, Ms. Lucier said. The second year, students live in apartments and learn to develop more independence. Ms. Morgan told subcommittee members that it is "an awesome program".

Former State Senator Tim Jennings, recognized by the chair to speak from the audience, said his daughter graduated from this program 17 years ago, and he urged ENMU to increase efforts to publicize the program to New Mexicans. There were 125 students when his daughter was enrolled and, for every student served, there are 200 more out there who need this help to become all that they can be, Senator Jennings said, adding that more funding is needed for recruitment. Students can be mainstreamed into regular classes, Ms. Lucier added; four of ENMU's most recent graduates started out in this program. Adults so often underestimate what students can do, Dr. Maguire said — they can rise to unbelievable heights, and ENMU sees this on a daily basis.

On questioning, subcommittee members and presenters discussed the following issues:

- efforts to track student success after they leave the program;
- the screening process to determine if a student is appropriate for the program;
- ways to bolster the student retention rate, now at 85 percent;
- outreach efforts to increase enrollment in the program;
- job placement challenges, since most students leave the area upon graduation;
- possible additional sources of funding for outreach efforts; and
- additional funding from the Higher Education Department.

Intermediate Care Facilities

Linda Sechovec is executive director of the New Mexico Health Care Association/New Mexico Center for Assisted Living, a professional trade association for facility-based long-term care providers, including intermediate care facilities for individuals with intellectual disabilities (ICF/IID). There are five organizations serving 263 individuals in ICF/IID programs, she said: ARCA in Albuquerque, CARC, Inc., in Carlsbad, Casa Angelica in Albuquerque, Easter Seals El Mirador (ESEM) in Santa Fe and New Horizons Developmental Center in Carrizozo. These nonprofit organizations rely almost completely on Medicaid funding to provide housing and active treatment in an intense regulatory environment, Ms. Sechovec said, and over the past year, severe inadequacies in the payment system have threatened the sustainability of the three largest ICF/IID programs (see handout). Rates are calculated every three years, and the most recent (2013) calculation resulted in rate reductions for 26 of 38 programs. It has been a year of rapidly escalating costs — from higher labor rates in some locations, higher health insurance rates and other required austerity programs. While the Human Services Department (HSD) has been working with providers to adjust individual rate requests for extraordinary circumstances, several providers are operating housing at rates that are below cost.

Further exacerbating ICF/IID housing problems are serious and sustained payment delays from Qualis Health, the state's new, inadequately prepared Medicaid medical eligibility contractor, Ms. Sechovec asserted. Equally challenging is the inability of providers to receive timely Medicaid eligibility determinations from the HSD's Income Support Division (ISD); when care can run \$175 to \$300 per day, payment delays threaten a provider's ability to stay in business. The current situation for providers is "the perfect storm", she said, and is so serious that she is requesting that subcommittee members consider a rewrite or revision of the entire payment system.

On questioning, subcommittee members and Ms. Sechovec discussed the following issues:

- redefining what economic "catastrophe" means;
- delays in determination due to the utilization review contractor and changed requirements;
- families unable to connect with a live person when calling the ISD office;
- the need to address continuing issues with the HSD's ASPEN eligibility system and a flood of unresolved cases; and
- delayed pay and eligibility determinations that also plague nursing homes and assisted living facilities.

Treatment and Care Venues for Persons with Disabilities Needing Residential or Extended Hospitalization

Mark Johnson, chief executive officer (CEO) of ESEM, said his nonprofit organization currently has receivables of more than \$800,000, and while Medicaid officials have been attentive to some issues, ESEM is still not getting paid and is struggling mightily with this problem. More than 400,000 disabled individuals are being served by community providers, Mr. Johnson said, and at least 20 percent of these individuals are also suffering from mental health

problems. There is no systemic approach to addressing the needs of this dually diagnosed population, and sometimes an individual can become dangerous to self, others and the general public. There is no access to psychiatric supports, hospitals or residential treatment, and often the only option is an encounter with law enforcement. If developmental disability (DD) is the primary diagnosis, it is nearly impossible to access behavioral health services.

Matt Pohl, executive director of Great Livin', LLC, an Albuquerque provider of structured living environments and supportive services for DD individuals, said there is a clear gap in services for persons with co-occurring mental illnesses, not just in New Mexico, but nationwide (see handout). The state has dynamic wraparound services available for people with intellectual disabilities, he said, but providers are not equipped for the higher, more dangerous levels of support needed for an individual who may exhibit explosive behaviors. Mr. Pohl described a situation at his facility that involved staff injury during attempts at de-escalation and hospital emergency room (ER) miscommunication regarding the patient's release. The current support system basically provides short-term symptom abatement, a Band-Aid rather than a real solution. Mr. Pohl suggested the following:

- specialty training and specialized residential supports and therapy services;
- an intermediate, acute residential "crisis house";
- funding for specialized family training and supports for health care professionals, including physicians and therapists;
- improvements to the state's mental health facilities, with five to 10 beds available to treat the acute needs of this population; and
- contact names and numbers of several individuals involved with these issues in New Mexico who could provide background and assistance in crafting solutions.

William (Jim) Rogers, L.C.S.W., L.I.S.W., founder of First Resort Interventions, LLC, is a social work clinical supervisor and trainer and has been a family therapist since 1983. Mr. Rogers sees a major disaster ahead with payment being five months behind for several providers of critical DD services. Taking the lowest bid does not necessarily provide the state with the services it needs. Mr. Rogers criticized mental health and hospital ER policies that are driven by insurance coverage, the depletion of providers with sufficient background and training, the denial of access to guardians and the use of the Supports Intensity Scale (SIS) evaluation to determine DD service needs, a tail-end program that has been turned into a front-end program by the state, he said.

Lea Armstrong described Robin, a 47-year-old family member with the mental capacity of a six-year-old who has co-occurring behavioral health issues. This "angel" of the family endangers her parents and herself when she is in intense peaks of anger. When taken to the hospital ER, hospital personnel either call the police or say she is fine and release her. This has been happening more often, and no one will help. Robin is part of a very small population, but she still matters, Ms. Armstrong said, and this population makes a big impact when these individuals become dangerous. Christus St. Vincent Regional Medical Center in Santa Fe and health care organizations in Las Vegas, Albuquerque and Los Lunas have all turned Robin away,

even when family members offered to pay for services. Only ESEM would help, she said, and her family is very grateful.

On questioning, Mr. Rogers told subcommittee members that behavioral health support allowed under the SIS is not the same as treatment. The real problem is that the system is not equipped to deal with the combination of DD and behavioral health issues.

Medicaid Home- and Community-Based Services for DD Individuals

Angela Medrano, deputy director of the Medical Assistance Division, HSD, told subcommittee members that the DD waiver central registry has approximately 6,000 persons on the waiting list. About 3,500 of these have been deemed eligible for the waiver (71 percent in at least one category of eligibility), and 50 percent are currently receiving community benefits through Centennial Care (CC). Long-term care is provided through CC, as are services to children through the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program under the state's Medicaid expansion plan. Approximately two percent of central registrants are Native Americans who are covered under Medicaid fee-for-service.

Cathy Stevenson, director of the Developmental Disabilities Supports Division, Department of Health (DOH), provided a snapshot of the numbers of individuals served in DD waiver programs in fiscal year 2015 (see handout), with a total of 4,631 individuals in the combined traditional waiver and Mi Via self-directed waiver programs. There were 355 new allocations to the waiver in 2015, and 6,365 individuals are on the waiting list as of July 1, 2015. Ms. Stevenson said this snapshot and chart of needs-distribution by group (A through H) will assist with budget planning, capacity building and overall program funding decisions. The DOH will fund DD waiver provider rate increases from July 1, 2014 to March 30, 2015 (approximately \$2.2 million) because the federal Centers for Medicare and Medicaid Services (CMS) did not approve them during this period. The CMS will pick up the federal share from April 1, 2015 forward. Ms. Stevenson introduced her staff, including Ronald Voorhees, M.D., medical director of the division, to subcommittee members.

Anna Otero Hatanaka, executive director of the Association of Developmental Disabilities Community Providers, thanked the subcommittee for supporting the increase in rates, but said that providers still believe they are underfunded. Agencies have had a hard time recruiting and retaining employees and many salaries have been frozen. The \$450,000 is well below a one-half percent increase, she noted. Rate increases in the Family Infant Toddler (FIT) program are also much appreciated, but still not up to the cost-study levels recommended. Providers are very grateful, but they need more, she said.

Adrienne R. Smith, director of the New Mexico Direct Caregivers Coalition (NMDCC), said economic, educational and systemic barriers exist for direct-care workers, who include home health aides, nursing aides, orderlies and attendants and personal care aides (see handouts). Caregivers are primarily women (89 percent), 18 percent are heads of households and they make an average of \$9.51 per hour. There are at least 210,000 New Mexicans caring for a family member, Ms. Smith said, urging that the NMDCC be used as a resource. The coalition's network

includes 7,500 professional and family caregivers and provides, through state funding, grants and private donations, no-cost training, education and administration of nationally recognized credentials. Training costs for the coalition are about \$100 to \$120 per eight-hour course, and this year they have trained approximately 900 individuals, up from 500 last year.

On questioning by subcommittee members, Ms. Stevenson and Ms. Medrano said they have been working with Qualis Health and have resolved most payment issues, and Qualis Health is now in compliance with its contract. The change to a centralized bureau for eligibility determinations did cause some delays, Ms. Medrano said, but they are working with staff and providers to resolve these issues as well. A subcommittee member cautioned that increasing the minimum wage can have unintended consequences and that it will increase unemployment insurance costs for these organizations.

Update on Local Services for Persons with Developmental Disabilities

Mark Schinnerer is CEO of CARC, Inc., a Carlsbad agency that is a FIT provider and an ICF/IID, but that is no longer providing DD waiver services. CARC used to have a small number of DD waiver clients, but staff began to note that changes in the program were negatively impacting their clients, who began choosing to live in group homes. Labor shortage issues, growing demands and increasing bureaucracy for the DD waiver program culminated with his agency's decision to withdraw from the program last spring. The Qualis Health transition created a financial crisis at his agency, which was finally resolved, Mr. Schinnerer said, but the ISD is a mess. He currently has 38 positions open and is running huge overtime hours. The three-year rate system has become unbearable; once rates are set, he will not get any of this money back until September 2016. He has ICF/IID homes sitting empty because he has no staff. Next month, CARC will receive an award from the American Health Association for its work services program, and if he had the money, he could serve 12 more people who are on the waiting list.

Joe Madrid, executive director of Tobosa Developmental Services (Tobosa), now in its thirty-seventh year of operation in Chaves County, told subcommittee members that he will soon be retiring. Mr. Madrid has been director for 36 years, and his agency serves 72 adults, 175 children in early childhood and 50 school-age children in a day care center. With a \$7 million budget, the agency provides staff benefits, which are essential for retention, but does not offer any retirement benefits. Since the recession began in 2011, Tobosa has been able to stay in business by cutting staff in middle management, but the impact of losing experienced directors and supervisors has been devastating, he said. Mr. Madrid introduced Rosy Rubio, who serves the agency as assistant director, human resources director, clinical department director and financial director. Mr. Madrid noted that he has never heard anyone speak of the need for a profit margin in a nonprofit organization, but it is essential for expansion, replacing vehicles and other equipment.

Ms. Rubio, also at Tobosa for 36 years, has been through roller-coaster rides in funding and changes in standards, she told subcommittee members. Qualis Health has been a nightmare, she said. At one point, with \$455,000 in claims submitted and only \$196,000 paid, she faced a payroll of \$200,000. Tobosa still has six clients with budgets that have not been approved, and

these are in the most severe needs category — Category H. Unemployment rates have gone up three percent, she said, and because Tobosa is considered a large employer, the agency was required to provide health insurance under the federal Patient Protection and Affordable Care Act, but Tobosa could only afford minimum coverage. Tobosa has great employees who care about the clients and the agency.

Debra Battista, M.S.N., R.N. and president and CEO of the nonprofit Tresco, Inc., told subcommittee members that an increasing number of intellectual disability and DD individuals are living longer and experiencing aging issues similar to the general population. She provided a detailed rationale for her request of additional funding for the delivery of nursing care for supported living services (see handout). Ms. Battista is studying for her doctorate, has a husband who is an addiction specialist and a daughter who is a psychiatrist.

Damian Houfek is president and CEO of ENMRSCH, Inc., a community-based nonprofit organization headquartered in Clovis, with satellites in Santa Rosa and Tucumcari, that operates FIT, EPSDT, autism and other programs serving more than 1,000 children and 100 adults. He told subcommittee members that ENMRSCH's 300-plus employees travel more than 70,000 miles annually and that they manage their contracts so they can accommodate clients that other employers have refused. ENMRSCH also provides supported employment, including a contract at Cannon Air Force Base where adults work in food service, cleaning and warehousing. Wages are significantly higher on the base, Mr. Houfek said, but transportation costs to and from the base cannot be billed. A subcommittee member suggested that the agency check with its regional council of governments for possible additional funding for transportation.

The chair addressed Ms. Medrano about the numerous provider complaints on late payments from Qualis Health. Ms. Medrano said her division is working with its contractor, Xerox, to set up advance payments for providers to help ease these problems.

Public Comment

Mr. Pohl told subcommittee members that he has two mid-level positions at his agency that he cannot fill due to competition with wages offered by the oil and gas industry. He complimented the NMDCC training and said he would be happy to collaborate on a training for co-occurring diagnoses. One might assume that a person on the DD waiver is being taken care of, Mr. Pohl said, but since the SIS, his agency cannot meet its own needs.

Adjournment

There being no more business, the subcommittee adjourned at 3:55 p.m.